

S 1277 IS

108th CONGRESS  
1st Session  
**S. 1277**

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

**IN THE SENATE OF THE UNITED STATES**

**June 18, 2003**

Mr. BIDEN (for himself, Mr. MCCONNELL, Mr. BUNNING, and Mr. GRAHAM of South Carolina) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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**A BILL**

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2003'.

**SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.**

(a) FINDINGS- Congress finds that--

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to

run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure--

- (i) the due process and political rights of law enforcement officers;
  - (ii) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and
  - (iii) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants;
- and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) DECLARATION OF POLICY- Congress declares that it is the purpose of this Act and the policy of the United States to--

- (1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;
- (2) provide continued police protection to the general public;
- (3) provide for the general welfare and ensure domestic tranquility; and
- (4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

### **SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.**

(a) IN GENERAL- Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

#### **`SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.**

`(a) DEFINITIONS- In this section:

`(1) DISCIPLINARY ACTION- The term `disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

`(2) DISCIPLINARY HEARING- The term `disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

`(3) EMERGENCY SUSPENSION- The term `emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

`(4) INVESTIGATION- The term `investigation'--

`(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

`(B) includes--

`(i) asking questions of any other law enforcement officer or non-law enforcement officer;

`(ii) conducting observations;

`(iii) reviewing and evaluating reports, records, or other documents; and

`(iv) examining physical evidence.

`(5) LAW ENFORCEMENT OFFICER- The terms `law enforcement officer' and `officer' have the meaning given the term `law enforcement officer' in section 1204, except the term does not include a law

enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

`(6) PERSONNEL RECORD- The term `personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

`(7) PUBLIC AGENCY AND LAW ENFORCEMENT AGENCY- The terms `public agency' and `law enforcement agency' each have the meaning given the term `public agency' in section 1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

`(8) SUMMARY PUNISHMENT- The term `summary punishment' means punishment imposed--

`(A) for a violation of law that does not result in any disciplinary action; or

`(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

`(b) APPLICABILITY-

`(1) IN GENERAL- This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

`(2) NONAPPLICABILITY- This section does not apply in the case of--

`(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

`(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

`(c) POLITICAL ACTIVITY-

`(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN POLITICAL ACTIVITY- Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

`(2) RIGHT TO RUN FOR ELECTIVE OFFICE- A law enforcement officer shall not be--

`(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

`(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is

determined to be in conflict with or incompatible with service as a law enforcement officer.

`(3) ADVERSE PERSONNEL ACTION- An action by a public agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

`(d) EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS-

`(1) COMPLAINT PROCESS- Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that--

`(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to--

`(i) the law enforcement agency employing the law enforcement officer; or

`(ii) any other law enforcement agency charged with investigating such complaints;

`(B) sets forth the procedures for the investigation and disposition of such complaints;

`(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

`(D) requires notification to the complainant in writing of the final disposition of the complaint and the reasons for such disposition.

`(2) INITIATION OF AN INVESTIGATION-

`(A) IN GENERAL- Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by--

`(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

`(ii) any other law enforcement agency charged with investigating such a complaint.

`(B) EXCEPTION- Subparagraph (A) does not apply if--

`(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

`(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.

`(3) COMPLAINANT OR VICTIM CONFLICT OF INTEREST- The complainant or victim of the alleged violation of law giving rise to an

investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

`(e) NOTICE OF INVESTIGATION-

`(1) IN GENERAL- Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning or to otherwise being required to provide information to an investigating agency.

`(2) CONTENTS OF NOTICE- Notice given under paragraph (1) shall include--

`(A) the nature and scope of the investigation;

`(B) a description of any allegation contained in a written complaint;

`(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

`(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

`(f) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION- If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

`(1) COUNSEL AND REPRESENTATION-

`(A) IN GENERAL- Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

`(B) PRIVATE CONSULTATION- During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

`(C) UNAVAILABILITY OF COUNSEL- If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

`(2) REASONABLE HOURS AND TIME- Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being

questioned at a different time, subject to the requirements of subsections (e) and (f)(1).

`(3) PLACE OF QUESTIONING- Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place--

`(A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

`(B) the place at which the officer under investigation reports for duty.

`(4) IDENTIFICATION OF QUESTIONER- Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of--

`(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

`(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

`(5) SINGLE QUESTIONER- During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

`(6) REASONABLE TIME PERIOD- Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

`(7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE-

`(A) IN GENERAL- Except as provided in subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

`(B) EXCEPTION- The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if--

`(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

`(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

`(8) RECORDING-

`(A) IN GENERAL- All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by

electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

`(B) SEPARATE RECORDING- To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

`(9) USE OF HONESTY TESTING DEVICES PROHIBITED- No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

`(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE-

`(1) NOTICE- Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

`(2) OPPORTUNITY TO SUBMIT WRITTEN RESPONSE-

`(A) IN GENERAL- Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

`(B) CONTENTS OF RESPONSE- The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

`(h) DISCIPLINARY HEARING-

`(1) NOTICE OF OPPORTUNITY FOR HEARING- Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

`(2) REQUIREMENT OF DETERMINATION OF VIOLATION- No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

`(3) TIME LIMIT- No disciplinary charge may be brought against a law enforcement officer unless--

`(A) the charge is filed not later than the earlier of--



`(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law;

or

`(ii) 90 days after the commencement of an investigation;

or

`(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

`(4) NOTICE OF HEARING- Unless waived in writing by the officer or the counsel or representative of the officer, not later than 30 days after the

filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of--

`(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

`(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

`(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

`(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE- Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with--

`(A) a copy of the complete file of the pre-disciplinary investigation; and

`(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that--

`(i) contain exculpatory information;

`(ii) are intended to support any disciplinary action; or

`(iii) are to be introduced in the disciplinary hearing.

`(6) EXAMINATION OF PHYSICAL EVIDENCE- Unless waived in writing by the law enforcement officer or the counsel or representative of that officer--

`(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

`(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

`(7) IDENTIFICATION OF WITNESSES- Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

`(8) REPRESENTATION- During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including--

`(A) the right to be represented by counsel or a representative;

`(B) the right to confront and examine all witnesses against the officer; and

`(C) the right to call and examine witnesses on behalf of the officer.

`(9) HEARING BOARD AND PROCEDURE-

`(A) IN GENERAL- A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall--

`(i) determine the composition of an independent and impartial disciplinary hearing board;

`(ii) appoint an independent and impartial hearing officer; and

`(iii) establish such procedures as may be necessary to comply with this section.

`(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD- A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

`(10) SUMMONSES AND SUBPOENAS-

`(A) IN GENERAL- The disciplinary hearing board or independent hearing officer--

`(i) shall have the authority to issue summonses or subpoenas, on behalf of--

`(I) the law enforcement agency employing the officer who is the subject of the hearing; or

`(II) the law enforcement officer who is the subject of the hearing; and

`(ii) upon written request of either the agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

`(B) EFFECT OF FAILURE TO COMPLY WITH SUMMONS OR SUBPOENA- With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)--

`(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

`(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall--

`(I) be subject to contempt of a court proceedings according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

`(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

`(11) CLOSED HEARING- A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

`(12) RECORDING- All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape, video tape, or transcription.

`(13) SEQUESTRATION OF WITNESSES- Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

`(14) TESTIMONY UNDER OATH- The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

`(15) FINAL DECISION ON EACH CHARGE-

`(A) IN GENERAL- At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

`(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT- The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law, as to which the officer was not charged.

`(16) BURDEN OF PERSUASION AND STANDARD OF PROOF- The burden of persuasion or standard of proof of the prosecuting agency shall be--

`(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

`(B) by a preponderance of the evidence as to all other charges.

`(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD- A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that--

`(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

`(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

`(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did in fact violate the rule, regulation, order, or procedure as charged;

`(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

`(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

`(18) NO COMMISSION OF A VIOLATION- If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation--

`(A) the matter is concluded;

`(B) no disciplinary action may be taken against the officer;

`(C) the personnel file of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

`(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

`(19) COMMISSION OF A VIOLATION-

`(A) IN GENERAL- If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

`(B) PENALTY- The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

`(20) APPEAL- Any officer who has been found to have committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

`(i) WAIVER OF RIGHTS-

`(1) IN GENERAL- An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

`(2) WRITTEN WAIVER- A written waiver under this subsection shall be--

`(A) in writing; and

`(B) signed by--

`(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

`(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

`(j) SUMMARY PUNISHMENT- Nothing in this section shall preclude a public agency from imposing summary punishment.

`(k) EMERGENCY SUSPENSION- Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall--

`(1) be followed by a hearing in accordance with the requirements of subsection (h); and

`(2) not deprive the affected officer of any pay or benefit.

`(l) RETALIATION FOR EXERCISING RIGHTS- There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of any right provided to the officer under this section.

`(m) OTHER REMEDIES NOT IMPAIRED- Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

`(n) DECLARATORY OR INJUNCTIVE RELIEF- A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in

any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

`(o) PROTECTION OF LAW ENFORCEMENT OFFICER PERSONNEL FILES-

`(1) RESTRICTIONS ON ADVERSE MATERIAL MAINTAINED IN OFFICERS' PERSONNEL RECORDS-

`(A) IN GENERAL- Unless the officer has had an opportunity to review and comment, in writing, on any adverse material included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may--

`(i) include the adverse material in that personnel record; or

`(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

`(B) RESPONSIVE MATERIAL- Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be--

`(i) attached to the adverse material; and

`(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

`(2) RIGHT TO INSPECTION OF, AND RESTRICTIONS ON ACCESS TO INFORMATION IN, THE OFFICER'S OWN PERSONNEL RECORDS-

`(A) IN GENERAL- Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

`(B) RESTRICTIONS- A law enforcement officer shall not have access to information in the personnel records of the officer if the information--

`(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was brought;

`(ii) contains letters of reference for the officer;

`(iii) contains any portion of a test document other than the results;

`(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

`(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that

officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

**`(p) STATES' RIGHTS-**

**`(1) IN GENERAL-** Nothing in this section may be construed--

**`(A)** to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

**`(B)** to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

**`(2) STATE OR LOCAL LAWS PREEMPTED-** A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

**`(q) COLLECTIVE BARGAINING AGREEMENTS-** Nothing in this section may be construed to--

**`(1)** preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that provides for substantially the same or a greater right or protection afforded under this section; or

**`(2)** prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.'.

**(b) TECHNICAL AMENDMENT-** The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

**`Sec. 820.** Discipline, accountability, and due process of State and local law enforcement officers.'.

## **SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.**

Nothing in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

## **SEC. 5. EFFECTIVE DATE.**

The amendments made by this Act shall take effect with respect to each State on the earlier of--

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

*END*